

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of AT&T Inc. For	)	WC Docket No. 07-21
Forbearance Under 47 U.S.C. § 160	)	
From Enforcement of Certain of the	)	
Commission's Cost Assignment Rules	)	

**COMMENTS OF THE  
TEXAS OFFICE OF PUBLIC UTILITY COUNSEL  
IN RESPONSE TO AT&T INC. PETITION FOR FORBEARANCE**

The Texas Office of Public Utility Counsel ("TOPC")<sup>1</sup> respectfully submits comments in response to the Federal Communications Commission's (FCC's) Public Notice, DA 07-731 released February 16, 2007. This Notice requests comment on AT&T's petitions<sup>2</sup> seeking forbearance from enforcement of certain FCC cost assignment rules, specifically: section 32.23; section 32.27; Part 64 Subpart I; Part 36; Part 69, Subparts D and E; and other related rules that are derivative of, or dependent on, the foregoing rules.<sup>3</sup> The petitions also seek limited forbearance from section 220(a)(2) of

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<sup>1</sup> TOPC is a state agency created by the Texas Legislature to represent the interest of residential and small commercial consumers involving telephone and electric utility issues. Public Utilities Regulatory Act, Tex. Gov't Code Ann. § 13.001 (Vernon 1998 & Supp. 2005).

<sup>2</sup> AT&T, on behalf of BellSouth, withdrew a BellSouth forbearance petition previously filed in WC Docket No. 05-342, which seeks similar relief, and AT&T refilled the BellSouth petition in this docket, WC Docket No. 07-21.

<sup>3</sup> See 47 C.F.R. §32.23, 32.27, Parts 36, 64 Subpart 1, and 69 Subparts D and E.

the Act to the extent this provision contemplates separate accounting of nonregulated costs.<sup>4</sup>

TOPC agrees with the recommendation of certain parties<sup>5</sup> that commented initially in the BellSouth forbearance docket, that the FCC should refer the issues raised by AT&T and BellSouth to a federal-state joint board. AT&T/BellSouth's forbearance request from the various cost assignment rules is complex and impacts both state and federal regulators. As such, staff from both jurisdictions should be given an opportunity to review and analyze the impact. A coordinated federal-state effort is needed in order to give proper perspective from both jurisdictions

TOPC opposes granting AT&T's petition based on AT&T's argument that due to price cap regulation, and in some states no regulation, costs are no longer needed. AT&T alluded in its petition that the State of Texas determined that even price cap regulation is no longer necessary.<sup>6</sup> For the State of Texas only a portion of AT&T's residential markets were deregulated the rest continue to have price cap regulation.<sup>7</sup> Under price cap regulation

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<sup>4</sup> 47 U.S.C. § 220(a)(2).

<sup>5</sup> *In the Matter of Petition of BellSouth Telecommunications Inc. For forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket 05-342, New Jersey Division of the Ratepayer Advocate (NJDR Comments) at 3-4 (Jan. 23, 2006); and, Reply Comments of the National Association of State Utility Consumer Advocates (NASUCA Reply) at 2-3 (Feb. 13, 2006).

<sup>6</sup> Petition at 2 fn 5.

<sup>7</sup> *Staff's Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) should Remain Regulated*, PUC Docket No. 31831, Order, Public Utility Commission of Texas (rel. Dec. 28, 2005) and *Petition of AT&T Texas to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) with Populations Less Than 30,000 Should*

the Commission and states should periodically assess if rates are reasonable, just and nondiscriminatory, such assessments would require cost information.

Many of AT&T's residential markets remained regulated in Texas due to a lack of competition. The Texas legislature and the Public Utility Commission of Texas require that at least three types of competitors are in a residential market with a population of less than 100,000 prior to deregulation.<sup>8</sup> TOPC agrees with earlier commentators<sup>9</sup> that ILECs are still dominant in many markets and as such there is a need to protect the consumer and guard against anticompetitive behavior. One way to offer the consumer such protection is to examine costs to determine whether predatory pricing is being practiced.

TOPC opposes elimination of Part 36 and Part 64 rules without adequate replacements to protect consumers.

Respectfully submitted,

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*Remain Regulated*, PUCT Docket No. 32977, Order, (rel. Oct. 17, 2006).

<sup>8</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 – 66-017, 65.052 (Vernon 2000 & Supp. 2005) (PURA).

<sup>9</sup> NJDRA Comments at 3, NASUCA Reply at 6-7, Time Warner at 11-12.

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